(2)

No. 01-258

Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

YVONNE LIEBEL,

Petitioner,

—v.—

EUGENE GRANT, ROBERT NAGRO, RICHARD SOLOMON, RIDGEFIELD BANK, WEIL, GOTSHAL AND MANGES, LLP, BRIDGE TO BROTHERHOOD, INC., MARK HOENIG, DAVID STONE, IRA MILLSTEIN, MARVIN JACOB, REYNOLDS AND ROWELLA, LLP, and PRICEWATERHOUSECOOPERS, LLP/KESSELMAN & KESSELMAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE STATE OF CONNECTICUT APPELLATE COURT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Ira Millstein and Marvin Jacob

QUESTIONS PRESENTED

Did the Appellate Court of the State of Connecticut err in dismissing the pro se Petitioner's appeal of an order which transferred this action to Connecticut's Complex Litigation Docket pursuant to the administrative procedures applicable to the Connecticut Complex Litigation Docket provisions?

Did the Supreme Court of the State of Connecticut err in denying Petitioner's "Joint Petition for Certification to the Supreme Court" with respect to an order of the Connecticut Appellate Court which dismissed Petitioner's appeal?

LIST OF PARTIES

The parties to the proceeding below were:

Yvonne Liebel (hereinafter referred to as "Liebel"), Petitioner;

The Alliance Foundation, Inc. (hereinafter referred to as "the Alliance Foundation");

Alliance Capital, Inc. (hereinafter referred to as "Alliance Capital");

General Homes, Inc. (hereinafter referred to as "General Homes");

Alliance International Development Corp. (hereinafter "Alliance International");

DTL-USA, Inc. (hereinafter "DTL");

Eugene Grant (hereinafter "Grant");

Robert Nagro (hereinafter "Nagro");

Richard Solomon (hereinafter "Solomon");

Ridgefield Bank (hereinafter "Ridgefield Bank");

Weil, Gotshal & Manges, LLP (hereinafter "Weil Gotshal");

Mark Hoenig (hereinafter "Hoenig");

David Stone (hereinafter "Stone");

Bridge to Brotherhood, Inc. (hereinafter "BTB");

Ira Millstein (hereinafter "Millstein");

Marvin Jacob (hereinafter "Jacob");

Reynolds and Rowella, LLP (hereinafter "Reynolds and Rowella"); and

PriceWaterhouseCoopers, LLP/Kesselman & Kesselman (hereinafter "PWC").

With respect to the corporate parties set forth above, in compliance with Rule 29(6) of this Court, no parent or publicly held company is known to own 10% or more of said parties' stock, if and to the extent stock is, or has been, issued with respect to said corporate parties.

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STATEMENT OF THE CASE

In the Connecticut Court system, cases typically are not assigned to one particular judge. As a result, multiple judges are often required to familiarize themselves with the facts and procedural history of a matter in order to render rulings with respect to that case. Recognizing the potential inefficiencies of this system in a matter involving complex issues and facts, the Connecticut legislature passed a statute which permits the Chief Court Administrator to assign a single judge to preside with respect to all motions, issues, hearings, etc., in a case involving complex issues and facts.

The issue before the Court arises out of the transfer of just such a complex matter to a Complex Litigation Docket Court in the State of Connecticut. The transfer was effected by an Application for Transfer on notice as well as an Objection to the Application. The Objection was overruled after a full and ample opportunity to be heard was afforded the objecting party. The case was transferred to Connecticut's Complex Litigation Docket pursuant to the Connecticut Rules of Court as part of the judicial mechanisms enacted to encourage, assist and foster the efficient operation of the Connecticut courts.

The pro se Petitioner argues that the simple transfer of the case to the Complex Litigation Docket amounted to a denial of her constitutional rights to due process and equal protection. The transfer of a case to a particular judge clearly does not deny any such rights. Accordingly, no such rights were denied and there is no issue otherwise requiring the attention of this Court.

Respondents Weil Gotshal, BTB, Hoenig, Stone, Millstein and Jacob respectfully submit that the "Questions Presented" as set forth in this Brief in Opposition must be answered in the negative and that the Petition should be denied.

On March 21, 2001, the Appellate Court of the State of Connecticut issued an Order granting a Motion to Dismiss Appeal filed with respect to a matter entitled Alliance Foundation, Inc. et al v. Eugene Grant et al (the "Main Action"). [1] In its Order, the court addressed an appeal by Liebel and the Alliance Foundation from a prior order which transferred the Main Action from the Superior Court, Judicial District of Danbury, to the State of Connecticut Superior Court Complex Litigation Docket Court located at Stamford. The Appellate Court dismissed the appeal because the Order below was a non-appealable non-final interlocutory order. [See Appendix A to Liebel's Petition for Writ of *Certiorari,* at page 1a.]

Following that ruling, the State of Connecticut Supreme Court denied Liebel's "Joint Petition for Certification to the Supreme Court." [See Appendix A1 through A4 to Liebel's Petition for Writ of *Certiorari,* at pages 2a through 7a.] In addition to the Main Action, a number of additional related matters with overlapping

[1] As referenced in Liebel's Petition, the Main Action bears a Connecticut State Court Docket number of DBD-CV-00-0338520-S. However, the correct and current docket number properly associated with the Main Action is (X02) CV-01-0167482-S. The Weil Defendants (Weil Gotshal; Hoenig; Stone; Millstein; and Jacob) and BTB are parties only to the Main Action.

parties appear as part of the record below. [2] By her requests for "Joint Certification," Liebel attempted to obtain review by the Supreme Court of the State of Connecticut of the Main Action and the Related Matters on a joint basis.

It is within this context of multiple parties, multiple claims and multiple filings that this Court is presented with the question of whether or not to grant Liebel's Petition. Put as succinctly as is practicable, Liebel maintains that she is entitled to the review of this matter by the Court insofar as her "due process rights" have been denied by the simple transfer of the Main Action (as well as three of the Related Matters) to the Complex Litigation Docket Court at Stamford. She also maintains that the Connecticut Supreme Court's refusal to review a non-appealable procedural order should be reviewed by this Court.

Petitioner has not demonstrated a basis for this Court's consideration of this matter pursuant to Rule 10 of the Rules of the Supreme Court or otherwise. She does not argue that there is a conflict either among the circuit courts or with a state court of last resort. Arguments that she has been deprived of her constitutional rights to due process and equal

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[2] The additionally referenced related matters (hereinafter referred to together as the "Related Matters") with corresponding corrected and current State of Connecticut Docket numbers are as follows: DTL-USA, Inc. v. Ridgefield Bank, CV-00-0338142-S; Eugene M. Grant v. Alliance Foundation, Inc., (X05) CV-01-0184856-S; Eugene M. Grant v. Alliance Capital, Inc., (X05) CV-01-0184857-S; and Eugene M. Grant v. Alliance Capital, Inc., (X05) CV-01-0184858-S. Although this Opposition is submitted only with respect to the Main Action, the arguments made herein are equally applicable to any consideration of the Related Matters.

protection are clearly without merit. Indeed, Liebel cannot demonstrate that this matter implicates the infringement or impairment of any constitutional right. Transfer of the Main Action and three of the Related Actions to the Complex Litigation Docket was clearly not an abuse of the Superior Court's discretion, and was therefore properly left undisturbed by the Appellate Court of Connecticut and the Connecticut Supreme Court. Consequently, there is no reason for this Court to exercise its authority in this case.

For these reasons, Liebel's Petition for a Writ of *Certiorari* should be denied.

STATEMENT OF FACTS

A. Liebel's Allegations

In the Main Action commenced by the Alliance Foundation and Liebel (as a pro se Plaintiff), Liebel seeks to make out expansive, broadly based and far ranging allegations against the Respondents. The most recent iteration of the allegations made by Liebel is contained in the twenty-eight Counts of plaintiffs' Third Amended Complaint - a tome of over one-hundred pages (excluding the hundreds of pages of exhibits) containing hundreds of paragraphs. The Third Amended Complaint seeks to allege a litany of torts and state law common law claims purportedly inflicted upon the named plaintiffs in connection with the corporate history, existence, operation and status of

the Alliance Foundation. [3] No discovery has been taken with respect to the Main Action.

B. Transfer to Complex Litigation Docket

Liebel's complaints with respect to the proceedings below center around the transfer of the Main Action and three of the Related Matters to the Complex Litigation Docket. Assignment to the Complex Litigation Docket is pursuant to Connecticut statute that provides as follows:

> Any action or the trial of any issue or issues therein may be transferred, by order of the court on its own motion or on the granting of a motion of any of the parties, or by agreement of the parties, from the superior court for one judicial district to the superior court in another court location within the same district or to a superior court location for any other judicial district, upon notice by the clerk to the parties after the order of the court, or upon the filing by the parties of a

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[3] Included among the allegations which Liebel seeks to assert below are: Civil Conspiracy; Waste/Squandering of Corporate Assets; Willful Mismanagement of Corporate Assets; Fraudulent Misrepresentation; Tortious Interference with Financial Expectations; Malpractice; Breach of Fiduciary Duty; Tortious Interference with Business Relationships; and Intentional Infliction of Emotional Distress. Ironically, by the very nature of the pleading below and the array of parties sought to be included in it, the plaintiffs below rendered the Main Action particularly suited to the transfer at issue. Further, given that pleading, the transfer at issue was designed to encourage and foster fairness and judicial efficiency for the benefit of ALL of the parties referenced – including Petitioner.

> stipulation signed by them or their attorneys to that effect. The Chief Court Administrator or any judge designated by the Chief Court Administrator to act on behalf of the Chief Court Administrator under this section may, on [his own] motion of the Chief Court Administrator or any such judge, when required for the efficient operation of the courts and to insure the prompt and proper administration of justice, order like transfers.

An Act Concerning Court Operations, Conn. Public Act No. 99-215, § 27(a) (1999).

Enacted to ensure the "efficient operation of the courts" and the "prompt and proper administration of justice," the following provisions of the Practice Book of the State of Connecticut are of note in any consideration of the Complex Litigation Docket. Section 23-13 provides:

> The chief court administrator or the chief administrative judge of the civil division may designate a group of cases that have many parties and common questions of the law or fact as complex litigation cases and assign the cases to a single judge for pretrial, trial, or both and, if appropriate, may assign the cases to another judge or court officer for settlement or mediation discussions.

Conn. Super. Ct. § 23-13 (2000).

Section 23-14, which is concerned with the powers of the Judge assigned in Complex Litigation Cases, provides:

> The judge to whom complex litigation cases have been assigned may stay any or all further proceedings in the cases, may transfer any or all further proceedings in the cases to the Judicial District where the judge is sitting, may hear all pretrial motions and may enter any appropriate order which facilitates the management of the complex litigation cases.

Conn. Super. Ct. § 23-14 (2000).

Finally, Section 23-15, relating to a request or application for Complex Litigation Status, provides:

> An attorney or judge may request the chief court administrator to make an assignment pursuant to Section 23-13. The request shall be submitted in writing to the chief court administrator and the chief administrative judge of the civil division. When an attorney makes such a request, the attorney shall serve a copy of the request on all other parties pursuant to Sections 10-12 through 10-17. Should the chief court administrator deem it appropriate to do so, the chief

> court administrator may solicit comments on the request by causing a notice to be published in the Connecticut Law Journal.

Conn. Super. Ct. § 23-15 (2000).

On or about October 12, 2000, defendant Grant submitted an "Application for Case Referral to the Complex Litigation Docket" with respect to the Main Action. Grant based his Application, in part, on the fact that:

> "[h]aving a single judge handle the case would save valuable judicial resources that would otherwise be expended if several judges have to become acquainted and reacquainted with the facts and procedural status of the case." [See Appendix D to Liebel's Petition for Writ of *Certiorari*, at page 22a.]

Liebel served and filed an Objection to Grant's Application for Complex Litigation Docket Referral, asserting that such a referral would create undue hardship on the Plaintiffs, counsel and witnesses in the Main Action, and that the interests of justice required that the matter remain in the Judicial District of Danbury. [See Appendix D1 to Liebel's Petition for Writ of *Certiorari*, at pages 23a-24a.]

With respect to the Application by Grant, the Hon. John J. Langenbach (Chief Administrative Judge)

"determined that such transfer [was] required for the efficient operation of the Courts and the proper administration of justice." [See Appendix D2 to Liebel's Petition for Writ of *Certiorari*, at page 25a.]

According to procedure set forth in the cited Connecticut authority, Liebel's Objection was referred to the presiding judge for the Complex Litigation Docket at Stamford to be scheduled for argument.

Thereafter, a hearing was scheduled for November 15, 2000, on Liebel's Objection. At the time of the Hearing, counsel for the corporate plaintiffs [4] along with Liebel (who appeared pro se) argued in favor of the Objection filed to the Application for Complex Litigation Docket referral. After hearing plaintiffs' arguments, the court overruled the Objection, finding that the matter was properly referred to the Complex Litigation Docket. [See Appendix C6 to Liebel's Petition for Writ of *Certiorari*, at page 20a.]

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[4] As of the date of service of Liebel's Petition (August 8, 2001), the corporate plaintiffs in the Main Action are not represented by counsel. Counsel for the corporate plaintiffs have resigned. Liebel now is acting pro se as to her interests only, which interests are separate and distinct from any claims, rights and/or remedies that may arguably attach to, belong to or are capable of being asserted by or for the corporate plaintiffs.

REASONS FOR DENYING THE PETITION FOR A WRIT OF *CERTIORARI*

1. No Question of Federal Law or Fundamental Right is Implicated

Petitioner's allegations with respect to the transfer of the Main Action and three of the Related Matters to the Complex Litigation Docket are more than somewhat muddled. The main thrust of her contentions appears to be that her due process [5] rights were violated by both the transfer to the Complex Litigation Docket and the Connecticut Supreme Court's refusal to hear her appeal of that non-final interlocutory order.

A. Transfer to Complex Litigation Docket

Liebel concedes that the transfer of a civil matter to the Complex Litigation Docket within the State of Connecticut is permissible, and she does not contest that the Main Action is properly characterized as a

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[5] The Fourteenth Amendment to the U.S. Constitution provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV. Liebel also alleges a violation of her equal protection rights. [See Liebel's Petition in Support of Writ for *Certiorari,* at page 19.] However, she does not pursue this theory. Also, Liebel apparently believes that her life and liberty are at risk and that a campaign of chemical warfare is being waged against her. [See Liebel's Petition for Writ of *Certiorari,* at page 18.]

"Complex Litigation" within the language of Section 23-13.[6] Further, Liebel does not challenge the constitutionality of the Complex Litigation Docket statutory authority [Conn. Public Act 99-215, Section 27a; Conn. Super. Ct. Rules Sections 23-13, 23-14, and 23-15]. [7] However, she seems to be objecting to the hardship that the effect of that transfer imposes upon her (i.e., one hour travel), and seeks to establish the attenuated proposition that the transfer constitutes a violation of a perceived right to choose venue.

The decision to transfer the Main Action to the Complex Litigation Docket was clearly within the discretion of the Superior Court. In *Halloran v. Town of North Canaan*, 32 Conn. App. 611, 630 A.2d 145 (Conn. App. Ct. 1993), the Appellate Court of Connecticut defined its abuse of discretion standard by stating that "[d]iscretion accorded to the trial court on questions of law is legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of justice." *Halloran*, 32 Conn. App. at 614, 630 A.2d at 147. The Appellate Court intimated that the abuse of discretion standard is a difficult hurdle to surmount, stating that

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[6] In the commentary to Section 23-13, "Complex Litigation" is described simply as "a group of cases that have many parties and common questions of law and fact." See Wesley Horton and Kimberly A. Knox, Connecticut Practice Services, Vol. 1A *Practice Book Annotated, Superior Court Civil Rules* 148 (West Group 4th ed. 1998).

[7] Liebel's failure to challenge the constitutionality of the statutory authorities at issue renders Rule 10 of the Rules of the United States Supreme Court even more important: "A petition for a writ of *certiorari* is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Rule 10, Rules of the Supreme Court of the United States.

"we must make every reasonable presumption in favor of the [court's] correctness of its action." *Halloran,* 32 Conn. App. at 614, 630 A.2d at 148. The *Halloran* court further stated that a determination of abuse of discretion requires not a "bad motive or wrong purpose but means that the ruling appears to have been made on untenable grounds." *Halloran,* 32 Conn. App. at 614, 630 A.2d at 147. Clearly, Petitioner cannot support and has not supported such an assertion with relation to the transfer of this case to the Complex Litigation Docket Court at Stamford. Petitioner has not even alleged that the decision to transfer the Main Action was made on untenable grounds.

Petitioner's implied argument that her right to choose venue has been violated is similarly unconvincing. Choice of venue has never been determined to be a fundamental constitutional right. See *State of Connecticut v. Orsini,* 187 Conn. 264, 270, 445 A.2d 887, 891 (Conn. 1982) where the court rejected a claim in a criminal case that statutory venue provisions involve a constitutional right regarding the composition of a potential jury.

A procedure for case management, such as the Connecticut statutes authorizing the transfer of a case to the Complex Litigation Docket, does not deprive a litigant of due process rights if that litigant still has his or her day in court. *In re Drexel Burnham Lambert Group, Inc.,* 160 B.R. 729, 733 (S.D.N.Y. 1993). Moreover, the fundamental right to which a litigant is entitled is that of access to the courts. *Des Vignes v. Dep't of Transp.,* 791 F.2d 142, 144 (Fed. Cir. 1986). The mere transfer of a case to another docket does not deprive a litigant of access to the courts. *Des Vignes,* 791 F.2d at 144. As is

clear from a review of the record provided, Liebel had numerous opportunities to be heard. Her access to the courts of the State of Connecticut has been unimpeded, unfettered and undisputed.

As is equally clear, every court has discretion to manage its own docket. *Des Vignes*, 791 F.2d at 14; see also, *Rodriguez v. Weprin*, 116 F.3d 62, 66 (2d Cir. 1997). ("A court's inherent power to control its docket is part of its function of resolving disputes between parties.") Liebel apparently is dissatisfied or deems it inconvenient for the State of Connecticut to have chosen to manage its docket in such a way. [8]

Liebel at no point claims that she was not given notice of the Complex Litigation Docket related proceedings or that she was denied an opportunity to be heard with respect to the transfer of the Main Action. Petitioner cites *Baldwin v. Hale*, 68 U.S. 223, 233 (1863) for the proposition that "parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." The Appendices to Liebel's Petition make it abundantly clear that she had notice of all of the relevant proceedings. Further, the Appendices show that Liebel was given an opportunity to be heard by the Superior Court, the Complex Litigation Docket at Stamford and the Appellate Court of Connecticut. In the case of *Hovey v. Elliot*, 167 U.S. 409, 415 (1897), the Court stated that "notice is only for the purpose of affording the party an opportunity of being heard upon the claim or

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[8] Liebel's attempt to characterize her commute to court as "long distance litigation" merits no rebuttal. [See Liebel's Petition for Writ of *Certiorari*, at page 25.]

the charges made; it is a summons to him to appear and speak..." Liebel clearly had such opportunities at the hearing of her Objection and when her appeal was dismissed. She presented her objections to the transfer at a hearing on November 15, 2000. [See Liebel's Petition for Writ for *Certiorari*, at page 7.] She also notes that she was provided an opportunity to be heard on March 12, 2001, and that Attorney Morin was present at that hearing. [See Liebel's Petition for Writ of *Certiorari*, at page 10.] [9]

Despite her chorus of protests claiming denials of due process, Liebel consistently retained access to the courts of the State of Connecticut. It is undisputed that the Complex Litigation Docket Court provided her with notice and opportunities to be heard. Therefore, the procedure used and the occurrence of transfer itself did not compromise Liebel's due process rights. [10]

Even if Liebel's Petition could be construed as challenging the constitutionality of the Complex Litigation Docket transfer statute, such a challenge would surely fail. The standard for review would be the "rational basis" standard because no fundamental right is implicated. *Reno v. Flores*, 507 U.S. 292, 311-312, (1993) (restriction of a right that is not fundamental is

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[9] That Liebel apparently dismissed her counsel only shows that her subsequent lack of representation was of her own making. [See Liebel's Petition for Writ of *Certiorari*, at page 8.]

[10] Liebel also boldly alleges that the judge presiding at the November 15, 2000 hearing departed from "traditional adjudication standards." [See Liebel's Petition for Writ of *Certiorari*, at page 25.] Petitioner neglects to specify the "traditional standards" that she alleges were disregarded, how those standards were ignored, and how Petitioner was allegedly harmed as a result.

sufficiently justified if it is rationally connected to the government's interest). See also, *State of Connecticut v. Angel C.*, 245 Conn. 93, 715 A.2d 652 (Conn. 1998) where a challenge to the constitutionality of a transfer statute allowing the transfer of a matter from the juvenile docket to the regular criminal docket of the Connecticut Superior Court was reviewed on the rational basis standard and was found not to offend due process.

Insofar as no fundamental rights are implicated in the transfer of a case to the Complex Litigation Docket, this argument as a basis for *certiorari* should be rejected.

B. Denial of Appeal

Liebel contends that the Connecticut Supreme Court should have heard her appeal of the Order transferring the Main Action and three of the Related Actions to the Complex Litigation Docket.

However, the Connecticut Supreme Court properly refused to hear Liebel because she appealed from a judgment that was not final. In Connecticut, the jurisdiction of the Supreme Court is generally restricted to appeals from final judgments. *Melia v. Hartford Fire Ins. Co.*, 202 Conn. 252, 254, 520 A.2d 605, 605 (Conn. 1987); see also, Conn. Gen. Stat. Section 52-263. [11] In

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[11] Connecticut General Statute § 52-263, concerning appeals from the Superior Court, provides:

Upon the trial of all matters of fact in any cause or action in the Superior Court, whether to the court or jury, or before any judge thereof when the jurisdiction of any action or proceeding is vested in him, if

Connecticut, the only circumstances under which an interlocutory order may be appealed are: (1) where the order or action terminates a separate or distinct proceeding; or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them. *Melia*, 202 Conn. at 254, citing *State v. Curcio*, 191 Conn. 27, 31, 463 A.2d 566, 569-570 (Conn. 1983).

Neither of these circumstances pertain here. Liebel seemingly misconstrues the meaning of "final," asserting that the interlocutory order was "final" in the sense that the Main Action was placed on the Complex Litigation Docket until the conclusion of the litigation.

As stated by the Connecticut Supreme Court, "'[t]he test [of] whether a judgment is 'final,' in the sense that an appeal may be taken from it, lies not in its nature, for the case may still remain in the trial court for further proceedings, but in its effect as concluding the rights of some or all of the parties." *Gores v. Rosenthal*, 148 Conn. 218, 221, 169 A.2d 639, 640 (Conn. 1961). It cannot sensibly or credibly be maintained that Liebel's rights have been impacted or adversely affected, let alone concluded, by the transfer of the Main Action and three of the Related Actions to a different State of Connecticut Superior Court Docket

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either party is aggrieved *by the decision of the court or judge upon any question or questions of law arising* in the trial, including the denial of a motion to set aside a verdict, *he may appeal* to the court having jurisdiction *from the final judgment* of the court or of such judge, or from the decision of the court granting a motion to set aside a verdict, except in small claims cases, which shall not be appealable, and appeals as provided in sections 8-8 and 8-9 [Emphasis Added]. Conn. Gen. Stat. § 52-263 (2001).

for the purpose of case management and administration.

Liebel relies on *Doe v. Yale University*, 2000 WL 1683401 (Conn. Super. Ct., Oct. 13, 2000) in support of the notion that the Main Action should not have been transferred. In *Doe*, the Superior Court sustained the plaintiff's objection to the transfer of that case from the Judicial District of New Haven to the Complex Litigation Docket. *Doe*, however, involved only one plaintiff and one defendant, unlike Liebel's odyssey to add defendants, claims and "related" actions. Furthermore, the *Doe* court noted that it was well within its discretion to sustain or overrule an objection on the transfer of a case to the Complex Litigation Docket. *Doe*, 2000 WL 1683401 at *2. In this case, however, Petitioner has not argued, nor can it be shown, that either the Appellate Court or the Connecticut Supreme Court abused their discretion. Regardless of any adverse consequence as perceived by Liebel, Petitioner has not offered any reason whatsoever why the decisions in this case should be reviewed by this Court.

Petitioner misinterprets the case law she cites, arguing that the interlocutory order transferring the Main Action to the Complex Litigation Docket is appealable as a final judgment because the Order involved a claimed right "the legal and practical value of which would be destroyed if not vindicated before trial." *Curcio*, 191 Conn. at 33-34, 463 A.2d at 571. In *Curcio*, the lower court's determination that a criminal defendant's appearance before a second grand jury did not invoke the double jeopardy clause was deemed not to be final, and, accordingly, the appeal from that order

was dismissed. The finality test applied by the *Curcio* court, and which Liebel claims is applicable, allows appeal from an interlocutory order only if "the order or action so concludes the rights of the parties that further proceedings cannot affect them." *Curcio*, 191 Conn. at 31, 463 A.2d. at 569-570. This is clearly not such a case.

The case of *In re Juvenile Appeal* (84-2), 1 Conn. App. 378, 472 A.2d 795 (Conn. App. Ct. 1984), is illustrative. In that criminal case, the court held that an order denying a transfer from the juvenile court to the regular criminal docket was not appealable under the *Curcio* test. The court found that the "attempt to appeal a merely procedural order flouts the well recognized policy against piecemeal litigation." *Juvenile Appeal*, 1 Conn. App. at 383.

In this matter, transfer to the Complex Litigation Docket did not conclude the due process rights of Petitioner, because she has obviously had notice and every meaningful opportunity to be heard, and still has every right to proceed with her case.

Clearly, in that no constitutional rights of Liebel are impacted by the actions below, no question of federal law has been presented for review by this Court.

2. Liebel's Petition Does Not Meet The Standard For Granting *Certiorari* Under Rule 10 Of This Court

This Court's limited scope of review on petitions for *certiorari* is reflected in its own rules. Rule 10 provides:

> Review on a writ of *certiorari* is not a matter of right, but of Judicial discretion. A petition for a writ of *certiorari* will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an

> exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
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> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 10 of the Rules of the Supreme Court of the United States (1999).

The last sentence of Rule 10 is unmistakably clear. As noted in a commentary on the Court's *certiorari* docket: "[W]here the applicable rule of law is settled, the Court will not supervise its application to particular facts and circumstances even if the

application is arguably wrong." Stephen M. Shapiro, *Certiorari Practice: The Supreme Court's Shrinking Docket*, 24 LITIGATION 25, 26 (No. 3, Spring 1998). Liebel presents no "compelling reason" as to why the Court should favor her with a writ of *certiorari*. The denial by a state court of a discretionary appeal on procedural grounds relating to state court guidelines for the efficient management and operation of its judicial resources is well within constitutional bounds.

Although the three enumerated instances favoring the grant of *certiorari* are specifically indicated to be neither exclusive nor controlling, they provide the basic guidelines. It is important to note that Liebel has neither pointed to conflicts among U.S. Courts of Appeal with regard to the issues she has raised, nor has she pointed to a decision that conflicts with that of a state court of last resort. Further, regardless of Petitioner's arguments that her constitutional rights have been denied, she has not indicated that the Connecticut Supreme Court has decided an important federal question that conflicts with the decision of another state court of last resort or of a United States Circuit Court of Appeals. Similarly, Petitioner's contentions that the Connecticut Supreme Court has decided an important question of federal law that has not been addressed by this Court are without merit. Instead, Liebel's argument that her due process rights have been denied is an attempt to have a discretionary decision by a Connecticut state court overruled after her attempts in the Appellate Court of Connecticut and the Connecticut Supreme Court have failed.

Liebel requests that this Court involve itself in a purely state court matter in which the Connecticut

courts have considered and applied local procedural rules, all the while liberally sprinkling allegations of "no due process" in the hope that a federal question will somehow surface.

Even a cursory review of Liebel's Brief reveals that Liebel does not provide any legal support for her abstract contention that an important federal question was involved in the transfer of the Main Action to the Complex Litigation Docket, or that an important federal question was involved in the Connecticut Appellate Court's denial of her appeal.

All in all, it cannot be argued that there exists any justification, much less any compelling justification, sufficient to invoke the attention and involvement of the U.S. Supreme Court. While Liebel's lament of "due process" violations clutter her submission, there are no facts or law asserted that support such a contention. She vaguely states that the transfer of the Main Action to the Complex Litigation Docket has "deprived her of life, liberty and property without due process," and that the transfer has "severely abridged privileges and immunities of the Petitioner." [See Liebel's Petition for Writ of *Certiorari*, at page 3.] However, she fails to state any specific facts that would demonstrate how the state court's determination and construction of its procedural process and mechanisms are the cause of her perceived ills.

Petitioner also miscites *Carey v. Piphus*, 435 U.S. 247, 259 (1978), to support her proposition that "Judge Langenbach's Interlocutory order transferring this

matter in the manner that he did was an unjustified or mistaken deprivation of Petitioner's life, liberty, or property and therefore, a violation of the Petitioner's Due Process rights." [See Liebel's Petition for Writ of *Certiorari*, at page 23.] The *Carey* decision did not in any manner discuss interlocutory orders and their potential impact on procedural due process rights. Instead, the Court in *Carey* considered the requirements for the imposition of damages for violations of due process. Here, Petitioner has not only failed to iterate how her life, liberty or property was mistakenly or unjustifiably deprived, but that her life, liberty or property was deprived at all. Liebel's primary argument is that her travel time to the court will be marginally longer than before. [12] This mild inconvenience does not rise to the level of a deprivation of life, liberty or property, and cannot possibly suffice to demonstrate a denial of due process.

The transfer of the Main Action was specifically authorized by state statute, was within the discretion and authority of the court at issue and concerned solely a matter of state court procedure. The Connecticut court's administration of the procedural mechanisms for the Complex Litigation Docket, given the nature of the Main Action and the tangentially related disputes, did not compromise any of Liebel's constitutional rights. The non-final interlocutory nature of the Orders in dispute simply did not provide the Connecticut Appellate Court with the jurisdiction it required to hear

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[12] Petitioner also asserts that "her life and her family's are at risk" [See Liebel's Petition for Writ of *Certiorari*, at page i] and accuses certain parties of attacks against her. [See Liebel's Petition for Writ of *Certiorari*, at page 18.]

the appeal as a threshold matter. Neither court action deprived Liebel of a constitutional right to notice or an opportunity to be heard.

CONCLUSION

For the reasons set forth herein, Liebel's Petition for a Writ of *Certiorari* should be denied.

Dated: Stamford, Connecticut
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Respectfully submitted,

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